

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

GOPHER STATE ETHANOL, LLC

**Bky. No. 04-34706 (DDO)
Chapter 11**

Debtor.

**MEMORANDUM OF FARMERS MILL & ELEVATOR, INC.
IN OPPOSITION TO DEBTOR'S MOTION FOR APPROVAL
OF POST-PETITION FINANCING AND FOR AUTHORIZATION
TO USE CASH COLLATERAL**

TO: Entities specified in Local Rule 9013-3(b).

INTRODUCTION

Farmers Mill & Elevator, Inc. ("Farmers Mill") files this response and objection to Debtor's Motion for a Final Order Authorizing Debtor to Obtain Post-Petition Financing and for Authorization to Use Cash Collateral ("Motion").

BACKGROUND

Farmers Mill is a creditor of Gopher State Ethanol, LLC ("GSE") and, accordingly, is an interested party in this case. Bruce E. Hendry ("Hendry") is Chairman of the Board of GSE and owns 100% of the stock of GSE. Debtor's Statement of Financial Affairs [Docket No.: 1-1].

Hendry is also a secured creditor of GSE. He is the holder of 50% of \$24,308,914 worth of the secured debt of GSE. Debtor's Schedules [Docket No.: 1-1].

The other holder of 50% of \$24,308,914 worth of the secured debt of GSE is GDN Holdings, LLC ("GDN"). *Id.* GDN is controlled by Glen Nelson, M.D. ("Nelson") and John Flottmeier ("Flottmeier").

The only current Directors of GSE are Hendry and Flottmeier. Nelson was a Director of GSE until December of 2003. Debtor's Statement of Financial Affairs [Docket No.: 1-1].

On July 14, 2004, Farmers Mill was awarded a judgment against GSE in the sum of \$281,334 by Dakota County District Court. Debtor's Schedules [Docket No.: 1-1].

On July 14, 2004 (the same day as the aforementioned judgment), Hendry directed the officers of GSE to transfer virtually all of the last operating cash in GSE, \$469,632.55, to Hendry and GDN. Flottmeier later called the officers of GSE and ratified that command.

An officer of GSE has now admitted that Hendry and GDN do not have any intention of investing sufficient additional capital in GSE to restart the plant.

All of the retainer paid to counsel for the Debtor for bankruptcy services in this case (\$52,000) came from secured creditors Hendry and/or GDN.

Given the forgoing, it would appear that the Debtor is under the control of secured creditors Hendry and GDN, and that the secured creditors are the only parties who will benefit from the post-petition financing and use of cash collateral that is being proposed in Debtor's Motion.

ARGUMENT

In its Motion, Debtor states that one of the alternatives to liquidation is to restart operations at the ethanol plant, which the Debtor identifies as a "realistic option." Debtor's Mot. at ¶ 17. However, Farmers Mill does not believe that a cash infusion of \$350,000 is going to be sufficient funding to permit Debtor to restart its operation.

Regardless, an officer of the Debtor has recently admitted that the company will not be restarted, at least not by the current owners. Accordingly, the only alternative beneficial to all the creditors of the estate would be to sell the plant, either as a going concern or on a piecemeal

basis. Because the secured debt is so great (\$26 million dollars in secured debt and \$11 million dollars in unsecured debt) compared to \$12 million dollars in assets, it would appear that Debtor's efforts in obtaining permission to use cash collateral are being made merely for the benefit of the secured creditors. *See, e.g., In Re Ames Dept. Stores, Inc.*, 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990) (holding that "proposed financing [under 11 U.S.C. § 364(c)] will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate.")

Moreover, in the event it is demonstrated that the secured creditors are not properly perfected, or that all or some of the secured creditors in this case should be equitably subordinated to the unsecured creditors, Debtor's proposal only takes money away from the unsecured creditors.

Pursuant to Local Rule 9013-2, Farmers Mill gives notice that it may, if necessary, call David A. Kreitzer, President and Chief Operating Officer of Debtor, and Joseph Auge, Sr., President, Farmers Mill & Elevator, Inc., to testify at the hearing on Debtor's Motion.

CONCLUSION

It is clear that Hendry and GDN are in control of the Debtor. Debtor's proposed use of cash collateral would only benefit Hendry and GDN in their capacities as secured creditors. As such, the proposed use of cash collateral is not fair, reasonable and adequate under the circumstances, and Debtor's Motion should be denied.

RIDER BENNETT, LLP

By /s/ Steven Kluz, Sr.
Steven Kluz, Sr. (56765)

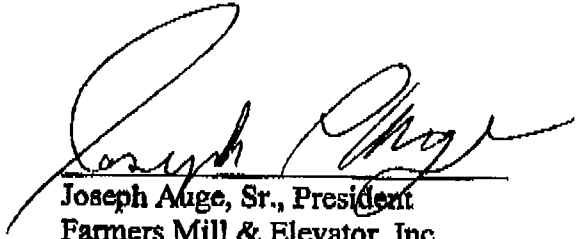
Dated: August 27, 2004

Attorney for Farmers Mill & Elevator, Inc.
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VERIFICATION

I, Joseph Auge, Sr., President for Farmers Mill & Elevator, Inc., declare under penalty of perjury that the facts set forth in the foregoing Response and Objection are true and correct according to the best of my knowledge, information and belief.

Dated: August 26, 2004



Joseph Auge, Sr., President
Farmers Mill & Elevator, Inc.

UNITED STATES BANKRUPTCY COURT
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Debtor.

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UNSWORN CERTIFICATE OF SERVICE

I, Tammy L. Dochniak, declare under penalty of perjury that on August 27, 2004 I faxed copies of the foregoing **Memorandum of Farmers Mill & Elevator, Inc. in Opposition to Debtor's Motion for Approval of Post-Petition Financing and for Authorization to Use Cash Collateral** to each entity named below at the address stated below for each entity:

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Dated: August 27, 2004